

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1898 OF 2013

Bajaj Alliance General Insurance Co. ...Appellant

Versus

Smt. Geeta Ratansing Rajput & Ors. ...Respondents

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Mr. M.M. Sathaye, for the Appellant and for the Applicant in CAF/1277/2013.

Mr. Akshay Kulkarni with Mr. Akshay P. Shinde for the Applicant in CAF/2948/2013 and for Respondent Nos.1 to 3 in FA/1898/2013.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 21st MARCH, 2018.

P.C.:-

The Appellant Insurance Company has challenged the judgment and award dated 29.8.2012 passed by MACT, Jaysingpur in M.A.C.P. No.1 of 2011. By the impugned judgment and award, the MACT has awarded to the Respondents/Claimants a compensation of Rs.7,77,500/- with interest at the rate of Rs.7.5% p.a. from the date of the petition, to be paid jointly and severally by the Appellant herein and the Respondent No.4.

2. Ratansing Rajput, 38 years of age and Mason by profession expired in a motor vehicular accident. The Respondent Nos.1, 2, 3,

5 and 6 being the widow, children and the parents of the deceased Ratansing Rajput had filed a petition under section 166 Motor Vehicle Act, 1988 for compensation of Rs 8,50,000/.

3. The case of the Respondents /claimants is that on the relevant day Ratansing Rajput was proceeding from Jaysingpur to Sangli on his motorcycle bearing No.MH-10-V-132 with his wife Geeta (R1) as a pillion rider. When they reached near Dr. Khatavkar Hospital at Jaysingpur, a pulsor motorcycle bearing No.MH-09-BR-7747, which was driven by the Respondent No.4 came from the opposite direction and in the process of overtaking a truck, it dashed against the motorcycle driven by Ratansing Rajput. Ratansing Rajput expired as a result of the injuries sustained in the said accident.

4. Upon considering the evidence adduced by the claimant, the learned Member of the Motor Accident Claims Tribunal held that accident was caused due to rash and negligent driving of the Respondent No.4. The Tribunal has also recorded a finding that the Insurance company has failed to prove the defence of contributory negligence. Relying upon the age recorded in the post mortem report, the Tribunal applied multiplier of 16. Since the deceased was working as a mason, the monthly income of the deceased was considered as

Rs.6000/- and after deducting 1/3rd towards personal expenses, computed Rs.7,68,000/ towards loss of dependency. In addition Rs.5000 was awarded to the Respondent No.1 towards loss of consortium, Rs.2000/- towards funeral expenditure and Rs.2,500/- towards loss of estate. Thus, the Tribunal awarded total compensation of Rs.7,77,500/-, which was ordered to be paid alongwith interest @ 7.5% p.a. from the date of the petition.

5. Mr. M.M. Sathaye, the learned counsel for the Appellant contends that the Tribunal has not deducted any amount towards contributory negligence on the part of the deceased. He contends that the total compensation awarded by the Tribunal is exorbitant and excessive.

6. Mr. Akshay Kulkarni, the learned counsel for the Respondent Nos.1 to 3 and 5 contends that there is no proof of contributory negligence. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

7. The Respondent No.1-Geeta, the widow of Ratansing

Rajput, was the pillion rider on the motor cycle driven by Ratansing. She had deposed about the manner of the accident. Her testimony clearly reveals that that her husband was driving the vehicle slowly, cautiously and along the correct side of the road. She has stated that the pulsor motorcycle bearing No.MH-09-BR-7747 had come from the opposite direction at a fast speed and in the process of overtaking a truck, had dashed against their motorcycle. Her testimony amply proves that the accident was caused solely due to the rash and negligent driving of the Respondent no.4. Her evidence, which has virtually gone unchallenged, stands fortified by the fact that the Respondent No.4 was prosecuted for driving the vehicle in rash and negligent manner. In the absence of any evidence to the contrary, the only inference that can be drawn is that the accident was caused solely due to the rash and negligent driving of the Respondent No.4 and there was no contributory negligence on the part of the deceased.

8. As far as quantum of compensation is concerned, the evidence of Geeta clearly indicates that her husband was working as Mason with M/s. Sai Construction at Jaisingpur, Kolhapur. She has stated that he was earning Rs.6,000/- p.m. It is true that apart from the statement of PW1, the claimants had not adduced any other

evidence to prove the income of the deceased. Nevertheless, considering the age of the deceased as well as the fact that the deceased was working as a Mason, the learned Presiding Officer of the M.A.C.T. has considered the average income of the deceased as Rs.6000/- per month, which in my considered view is neither exorbitant nor unreasonable. The learned Presiding Officer after deducting 1/3 towards personal expenses of the deceased, has computed the annual income of the deceased as Rs.48,000/. Taking note of the entry in the postmortem report, the age of the deceased is considered to be 40 years. The tribunal has applied the multiplier of 16, however, having regard to the age of the deceased at the time of the death (40 years), and considering the judgment of the Apex Court in *Sarla Verma & Ors. vs. Delhi Transport and Anr.*, (2009) 6 SCC 121 the multiplier applicable is 15. Therefore the total loss of dependency works out to Rs.48,000 X 15= 7,20,000/ and not Rs 7,68,000/ as computed by the tribunal. The tribunal has thus awarded an excess amount of Rs. 48,000/ towards loss of dependency.

9. It is pertinent to note that the tribunal has not awarded any compensation to the two minor children as well as the parents of the deceased under the head loss of love and affection. Furthermore the

tribunal has awarded a very meager amount under the other conventional heads i.e. Rs. 5000/- towards loss of consortium, Rs.2000/- towards funeral expenses and Rs. 2500/- towards loss of estate. Under the circumstances, I am inclined to adjust the excess compensation awarded under the head loss of dependency as compensation under these other conventional heads.

10. Considering the above facts and circumstances, the compensation awarded is just and reasonable. The appeal has no merits and is accordingly dismissed.

11. The appellant has already deposited the amount before the Tribunal. In the event any amount/compensation remains unpaid and invested, 30% of the same along with proportionate interest thereon is ordered to be paid to the Respondent No.1-Geeta. Similarly, the Respondent Nos.2 and 3 are each entitled to 20% compensation with proportionate interest accrued thereon. The said amount be disbursed to them after they attain the age of majority. 15% of the balance amount with proportionate interest is ordered to be paid to the Respondent Nos.5 and 6 each.

(SMT. ANUJA PRABHUDESSAI, J.)